

## § 6.6

pursuant to the provisions of paragraph (b)(2) of this section, the Solicitor, subject to the approval of the Commissioner, shall leave the entire right, title, and interest in and to the invention in the employee, subject to law.

(c) In the event that the Solicitor determines, pursuant to paragraph (b) (2) or (4) of this section, that title to an invention will be left with an employee, the Solicitor shall notify the employee of this determination and promptly prepare, and preserve in appropriate files, accessible to the Commissioner, a written signed, and dated statement concerning the invention including the following:

(1) A description of the invention in sufficient detail to identify the invention and show the relationship to the employee's duties and work assignment;

(2) The name of the employee and his employment status, including a detailed statement of his official duties and responsibilities at the time the invention was made; and

(3) A statement of the Solicitor's determination and reasons therefor. The Solicitor shall, subject to considerations of national security, or public health, safety, or welfare, submit to the Commissioner a copy of this written statement. This submittal in a case falling within the provisions of paragraph (b) (2) of this section shall be made after the expiration of the period prescribed in § 6.6 for the taking of an appeal, or it may be made prior to the expiration of such period if the employee acquiesces in the Solicitor's determination. The Commissioner thereupon shall review the determination of the Solicitor and the Commissioner's decision respecting the matter shall be final, subject to the right of the employee or the Solicitor to submit to the Commissioner within 30 days (or such longer period as the Commissioner may, for good cause, shown in writing, fix in any case) after receiving notice of such decision, a petition for the reconsideration of the decision. A copy of such petition must also be filed by the inventor with the Solicitor within the prescribed period.

## 43 CFR Subtitle A (10-1-03 Edition)

### § 6.6 Appeals by employees.

(a) Any employee who is aggrieved by a determination of the Solicitor pursuant to § 6.5(b) (1) or (2) may obtain a review of the determination by filing, within 30 days (or such longer period as the Commissioner may for good cause shown in writing, fix in any case) after receiving notice of such determination, two copies of an appeal with the Commissioner. The Commissioner then shall forward one copy of the appeal to the Solicitor.

(b) On receipt of a copy of an appeal filed pursuant to paragraph (a) of this section, the Solicitor shall, subject to considerations of national security, or public health, safety, or welfare, promptly furnish both the Commissioner and the inventor with a copy of a report containing the following information about the invention involved in the appeal:

(1) A copy of a statement containing the information specified in § 6.5(c), and

(2) A detailed statement of the points of dispute or controversy, together with copies of any statements or written arguments that may have been filed, and of any other relevant evidence that the Solicitor considered in making his determination of Government interest. Within 25 days (or such longer period as the Commissioner may, for good cause shown, fix in any case) after the transmission of a copy of the Solicitor's report to the employee, the employee may file a reply thereto with the Commissioner and file one copy thereof with the Solicitor.

(c) After the time for the employee's reply to the Solicitor's report has expired and if the employee has so requested in his appeal, a date will be set for the hearing of oral arguments by the employee (or by an attorney whom he designates by written power of attorney filed before, or at the hearing) and the Solicitor. Unless it shall be otherwise ordered before the hearing begins, oral arguments will be limited to thirty minutes for each side. The employee need not retain an attorney or request an oral hearing to secure full consideration of the facts and his arguments. He may expedite such consideration by notifying the Commissioner when he does not intend to file a reply to the Solicitor's report.

(d) After a hearing on the appeal, if a hearing was requested, or after expiration of the period for the inventor's reply to the Solicitor's report, if no hearing is set, the Commissioner shall issue a decision on the matter, which decision shall be final after the period for asking reconsideration expires or on the date that a decision on a petition for reconsideration is finally disposed of. Any request for reconsideration or modification of the decision must be filed within 30 days from the date of the original decision (or within such an extension thereof as may be set by the Commissioner before the original period expires). The Commissioner's decision shall be made after consideration of the statements of fact in the employee's appeal, the Solicitor's report, and the employee's reply, but the Commissioner, at his discretion and with due respect to the rights and convenience of the inventor and the Solicitor, may call for further statements on specific questions of fact or may request additional evidence in the form of affidavits or depositions on specific facts in dispute.

#### § 6.7 Domestic patent protection.

(a) The Solicitor, upon determining that an invention coming within the scope of § 6.5(b) (1) or (2) has been made, shall thereupon determine whether patent protection will be sought in the United States by the Department for such invention. A controversy over the respective rights of the Government and of the inventor in any case shall not delay the taking of the actions provided for in this section. In cases coming within the scope of § 6.5(b)(2), action by the Department looking toward such patent protection shall be contingent upon the consent of the inventor.

(b) Where there is a dispute as to whether paragraph (b) (1) or (2) of § 6.5 applies in determining the respective rights of the Government and of an employee in and to any invention, the Solicitor will determine whether patent protection will be sought in the United States pending the Commissioner's decision on the dispute, and, if he determines that an application for patent should be filed, he will take such rights as are specified in § 6.5(b)(2), but this shall be without prejudice to acquiring

the rights specified in § 6.5(b)(1) should the Commissioner so decide.

(c) Where the Solicitor has determined to leave title to an invention with an employee under § 6.5(b)(2), the Solicitor will, upon the filing of an application for patent and pending review of the determination by the Commissioner, take the rights specified in that paragraph, without prejudice to the subsequent acquisition by the Government of the rights specified in § 6.5(b)(1) should the Commissioner so decide.

(d) In the event that the Solicitor determines that an application for patent will not be filed on an invention made under the circumstances specified in § 6.5(b)(1) giving the United States the right to title thereto, the Solicitor shall subject to considerations of national security, or public health, safety, or welfare, report to the Commissioner promptly upon making such determination, the following information concerning the invention:

(1) Description of the invention in sufficient detail to permit a satisfactory review;

(2) Name of the inventor and his employment status;

(3) Statement of the Solicitor's determination and reasons therefor.

The Commissioner, may, if he determines that the interest of the Government so requires and subject to considerations of national security, or public health safety, or welfare, bring the invention to the attention of any Government agency to whose activities the invention may be pertinent, or cause the invention to be fully disclosed by publication thereof.

#### § 6.8 Foreign filing.

(a) *By Government.* (1) In every case where the employee has indicated pursuant to § 6.2(d)(10), his willingness to assign the domestic patent rights in the invention to the Government, or where it has been determined pursuant to § 6.5 that the Government shall obtain the entire domestic patent rights, the Government shall reserve an option to acquire assignment of all foreign rights including the rights to file foreign patent applications or otherwise to seek protection abroad on the invention.